1944. **File No.** O Matadars/44

Legal Deptt.

A BRANCH

Subject:— Opinions under the Matadars Act 1887

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File No. O Matadars/44

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C O N T E N N T S

Legal Department.O. Matadars/44.

Sr. No.	R. I. O. No.	Subject	Pages.
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2.	10243 / 1-12-44	26 / 2-1-45 Sec. 9. Re: Methia Watandari Village. Question regarding division of Motadars among the representatives of sec. 79 of the Bombay Hereditary Offices Act, 1874.	3-6

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Office of the R.L.A.

The term 'fit' in section 21 and 22 of the Matadar's Act, 1887, must in its context be taken to have reference to section 30 and means a person not disqualified. Fitness is a personal qualification. The question whether or not a matadar's deputy is fit must be decided with reference to the person himself and not with reference to administrative considerations of an extraneous nature. The view tkaen by U.S., R.D. at pp 20-21 ante is correct.

Sd/- P.N.Moos
o.c. 9/3/4
Remembrancer of Legal Affairs.

U.R. to R.d., No. 1829, dated the 9th March 1944.

Mjr/6/7
4 Cs.

Submitted

2. It appears that Mothia is a Watandari Village in Ankleshwar. Taluka, Broach ' Panch Mahals District, having for representative Matadars. One of these representative Matadars- Fakira Bhana (Rm. No 4) died on 26-10-1929 (vide the pedigree in loose papers below slipped X). Under the Prant Officer's Order dated 9/10-3-1930 the mata held by the deceased Fakira Bhana was ordered to be entered in the name of Mr. Gangaram Abheram, a member of another branch (viz No. 3 in the pedigree at slip X) thereby contravening the provisions contained in cl(b) of the proviso to sec.9 of the Bombay Matadars Act, 1887 according to which the above mata should have been divided among the remaining three representative matadars. As the papers underlying this Order of the Prant Officer have been destroyed, it is not now possible to know the grounds on which the same was passed. Mr. Gangaram died in 1932 and the Mata was entered in the name of the nearest heir Mr. Uttamram Fakira who died in 1940. The mata is now claimed by Mr. Jagjivan Kashiram, a representative matadar (in branch No. 3) and Mr. Itchharam Pranjiva (in branch No.2) Mr. Jagjivan is the nearest hir (being the nephew of the deceased Uttamram) but according to the provisions contained in sec. 9 of the Act referred to above he will be disqualified to inherit this Mata as he already holds one., To solve the resulting difficulty, the Collector, Broach and Panch Mahals has proposed that Govt. may revise the Order of the Prant Officer passed in 1930 suomotu so that Mata No. 4 may be distributed among the remaining three representative matadars only. The Commr.N.D. has recommended the Collector's above proposal. R.D..has agreed with the same and a letter to the Commissioner N.D. directing that the Prant Officer's order of 1930 ordering the entry Nf Mata No.4, in the name of Mr. Gangaram Abheram and all other subsequent orders relating to that Mata should be set aside on the ground that they contravened the provisions of sec. 9 of the Bombay. Matadars Act, 1887 and

that the Mata lands be divided among the remaining three representative Matadars in proportion to their shares is to be issued. As directed by B.S.R.D., the papers are shown by the R.D. to R.L.A. before issue of the above orders.

3. As stated above, the papers underlying the Prant O Officer's Order dated 9-10-1930, have been destroyed. It is therefore difficult to know on what grounds the above order directing the mata No. 4 to be entered in the name of Mr. Gangaram Abheram was passed. This order was however in contravention of the procedure laid down in cl. (b) of Proviso to sec. 9 of the Bombay Matadars Act. 1887, which lays down that in any case where the deceased matadar was not a sole representative matadar, if the heir next in succession is not a member of the branch of the matadar family to which the deceased matadar belonged but is another matadar of the same village or is a member of the branch of another matadar of the same village, and if there are more than one remaining representative matadars of the same village who are descend d from the same original matadar as the deceased, the share entered in the register against the nake of the deceased matadar shall be divided among such remaining representative matadars in proportion to their shares. As opined by the D.G.P. Broach and Panch Mahals in his opinion No. O.P.M. 18 dated 3rd July 1942, Govt. can revise the orders of the subordinate officers under sec. 79 of the Bombay Hereditary Officers Act, 1874. There is no bar of limitation in such cases. (cfCommentary Under section 79 of the above Act in Phadnis's Watan Act at pp 203-205). It appears therefore that the Orders to be issued by R.D. in the present case will be legally proper. The papers may therefore be seen and returned.

Sd/- S.A. Vora
28/22

Office of the R.L.A.

The draft order at page 5 may be amended slightly as shown in pencil before it is issued.

Sd/- P.N.Moos
2/1/45.

Remembrancer of Legal Affairs.

U.R. to R.D., No. 26 , dated the 2nd January 1945.

Mjr/6/7

4 Cs.